November 8, 2019 Submitted via email: hr2w@oehha.ca.gov

Attn: Dr. Carolina Balazs
Office of Environmental Health Hazard Assessment
1515 Clay Street, 16th Floor
Oakland, CA 94612

RE – Comments on the Public Review Draft Mapping Tool and Draft Report, *Achieving the Human Right to Water in California: An Assessment of the State's Community Water Systems*

Dear Dr. Balazs:

The Association of California Water Agencies (ACWA) and California Municipal Utilities Association (CMUA) appreciate the opportunity to provide public comment on the Office of Environmental Health Hazard Assessment (OEHHA) Public Review Draft Report entitled, *Achieving the Human Right to Water in California: An Assessment of the State's Community Water Systems* (Draft Report) and Draft Mapping Tool (Draft Tool).

We are appreciative of the public processes that OEHHA has organized thus far. ACWA, CMUA and our member agencies have reviewed the Draft Report and Draft Tool in detail and have policy, technical and process concerns. At this time, **we are concerned that the Draft Report and Draft Tool have not been sufficiently vetted by water agencies** and other systems responsible for providing safe drinking water to the public. We request OEHHA to, at a minimum, consider the following to further and productively engage the water community:

- Host a water community meeting to review and discuss the attached initial comments prior to OEHHA finalizing the report and tool;
- Provide water systems with the raw data from the tool when requested;
- Develop and institute a process that allows water systems the ability to appeal data shown in the tool and contextualize it with more relevant accurate information; and
- Form an advisory group comprised of diverse water agencies, academia, community advocates and other interested stakeholders to serve in collaboration with OEHHA and provide an ongoing opportunity to discuss current and future indicators, and versions of the tool.

A more robust, collaborative process is needed with the water community to ensure success of this tool. We will gladly facilitate the involvement of water community experts in an Advisory Group to continue these on-going discussions. Continued input, data, and examples need to be

shared and the feasibility of current indicators need to be evaluated before finalizing the report and tool.

Please note that our comments are focused on the current version of the draft Report and Draft Tool. We have not included comments on the potential indicators considered for future inclusion as outlined in the "Future Considerations" section of the Draft Report. We believe it is important to first focus on the foundational architecture of this inaugural version of the tool and report. It is our strong desire that OEHHA will collaborate with the water systems in the drafting of future versions of the tool.

Please find our initial comments for your consideration. This does not represent a complete list of requested changes. We are available to discuss our comments by contacting Melissa Sparks-Kranz at melissas@acwa.com or (916) 441-4545 or Jonathan Young at jyoung@cmua.org or 916-326-5806. We look forward to continuing to engage with OEHHA on this important effort.

Sincerely,

Melissa Sparks-Kranz
Regulatory Advocate
Association of California Water Agencies

Jonathan Young
Regulatory Advocate
California Municipal Utilities Association

cc: The Honorable Lauren Zeise, Ph.D., Director, OEHHA
Mr. Allan Hirsch, Chief Deputy Director, OEHHA
Mr. John Faust, Ph.D., Branch Chief of Community and Environmental Epidemiology Research, OEHHA

Attachment: ACWA and CMUA Initial Comments on OEHHA's Human Right to Water Draft Report and Draft Tool

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I. Stakeholder Engagement

Comment 1: Engaging and incorporating water community input will result in a better final Report and Tool.

ACWA and CMUA believe that in order for the Draft Report and Draft Tool to be successful it must be developed in partnership with the water community. The water community has a vested interest in the outcomes of the evaluation of water systems in a statewide, publicly-available tool to be used by decision-makers. As was stated in our cover memo, we request OEHHA to, at a minimum, do the following to continue to engage the water community:

- **Host a water community meeting to review and discuss the attached initial comments prior to OEHHA finalizing the report and tool**.
  ACWA and CMUA formally request to have a meeting with OEHHA to discuss the following comments. This meeting needs to be a two-way discussion where we share our comments and have a dialog on the resolutions of each comment.

- **Provide water systems with the raw data from the tool when requested.**
  It was stated in the October 3 OEHHA webinar that water systems could request the raw data from the tool. OEHHA needs to provide a timely response with raw data to ensure the tools accuracy.

- **Develop and institute a process that allows water systems the ability to respectfully appeal data shown in the tool and contextualize it with more accurate and relevant information.**
  If this tool is intended to assess water systems, there needs to be a process that allows water systems the ability to appeal a given score and contextualize the data. As a possible solution, there could be an option for water systems to submit to OEHHA a short comment and direct link to their systems webpage that can provide additional information on a system's pop-up window when it is selected on the map. This is foundational for a tool that will be used by local and state decision makers and is publicly available. We are available to support OEHHA to develop this process.

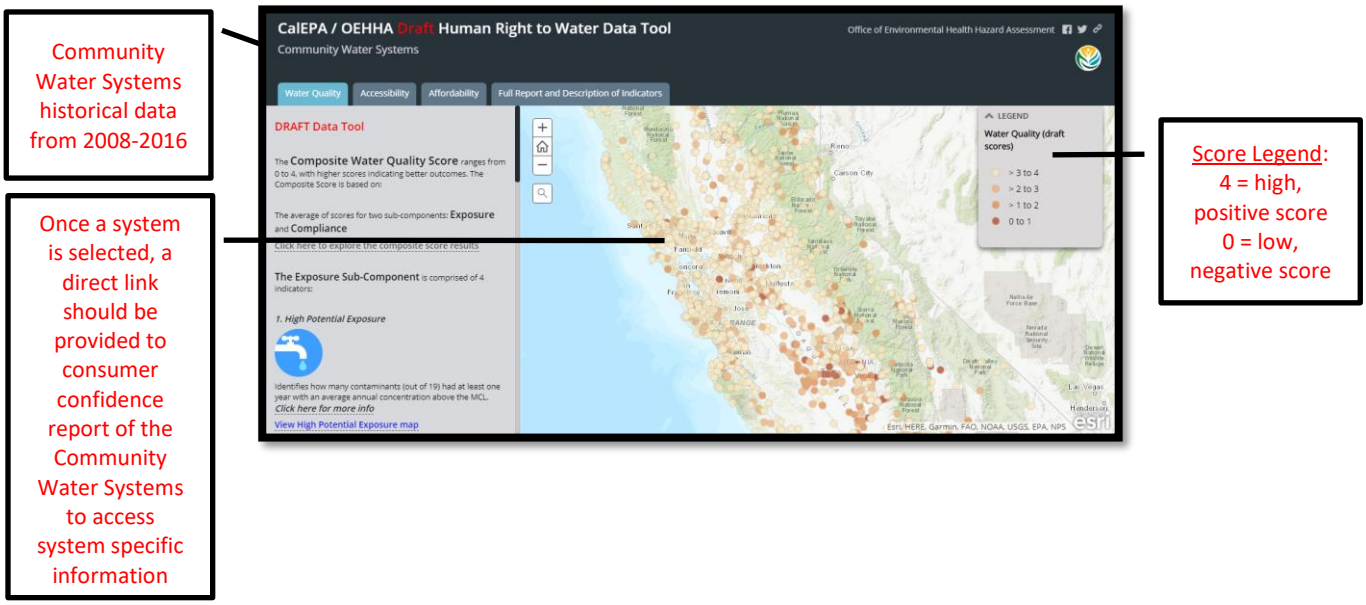
- **Form an advisory group comprised of diverse water agencies, academia, and other interested stakeholders to serve in collaboration with OEHHA and provide an ongoing opportunity to discuss current and future indicators, and versions of the tool.**
  We believe that the development the Framework and Tool needs a formal Advisory Group of both water agencies, academia representatives, community advocates, and other stakeholders to provide input on how current indicators and proposed future indicators are developed. An Advisory Group that meets regularly would provide OEHHA support for vetting ideas and indicators for the tool.

ACWA and CMUA request OEHHA further engage with the water community to walk through examples and understand our concerns prior to moving forward with finalizing the tool.

II. Technical Comments Regarding the Draft Tool

Comment 2: The Draft Tool needs to include critical information to improve the usability of the tool for the public.

The Draft Tool is missing important information for the public or users to understand what the tool is actually portraying. It is important that the tool be clearly labeled as a historic snapshot in time with data from 2008 to 2016. The data in the Draft Tool is not portraying current data for standards that are enforceable. Secondly, the scores needs to be understandable to the public or users of the tool. Currently, there is no score legend or description of what the score rankings mean. The score range and implications needs to be clear when viewing the tool. To provide the relevant water system's monitoring data, once a water system is selected in the tool, OEHHA should work with the Division of Drinking Water, which collects Consumer Confidence Reports (CCR) to determine the best way to provide a link in the tool for users to search for a specific systems CCR.



Comment 3: All component scores need to include a link to the data source from which it was calculated for water systems to vet the data and provide more accurate data, as needed.

The Draft Report outlines 13 indicators that fall under the three components of water quality, water accessibility and water affordability. The Draft Report proposes each indicator will receive a value and then a composite score will be developed for each component. Generally, a composite score approach does not lead to a narrative for describing or understanding the vulnerabilities faced by a water system or even the relative level of an indicator. Therefore, water systems should be able to access all information, including how their scores were calculated and the relevant data sources to verify for accuracy. For example, the affordability component uses a formula-based scoring approach and does not link to any data that provides

the basis for the score. Water systems therefore cannot verify their score for accuracy. It would be helpful if data were linked in the tool to provide the source and additional context for the score.

III. Component 1: Water Quality

Comment 4: The Water Quality component should be retitled to Safe Drinking Water.

With the enactment of the Human Right to Water policy (AB 685, Statutes of 2012), the state set forth that "*…every human being has the right to safe, clean, affordable, and accessible water adequate for **human consumption, cooking, and sanitary purposes**" (emphasis added).* The underlying purpose of the policy is to provide water for human consumptive purposes, which must be potable or drinkable. In the water industry, water quality can also refer to non-potable water (i.e., water quality levels of untreated water in rivers or streams). ACWA and CMUA suggest the 'Water Quality' component be retitled to 'Safe Drinking Water' to more accurately describe the intent of this section and to align with the Human Right to Water policy.

Comment 5: The indicators related to safe drinking water need to be based on compliance with standards consistent with state and federal laws.

The Draft Report outlines two subcomponents, including exposure and non-compliance, under Component 1: Water Quality. Current state and federal laws require water systems to comply with testing methodologies, requirements, and reporting standards to be in compliance with drinking water maximum contaminant level (MCLs) or standards for specific contaminants. The Draft Report should be consistent with the requirements of these laws and contain indicators based on compliance with regulatory standards.

a. **The exposure subcomponent should be removed. The indicator does not accurately represent water quality contamination at the household tap and should therefore be removed until a better metric is established to measure exposure.**

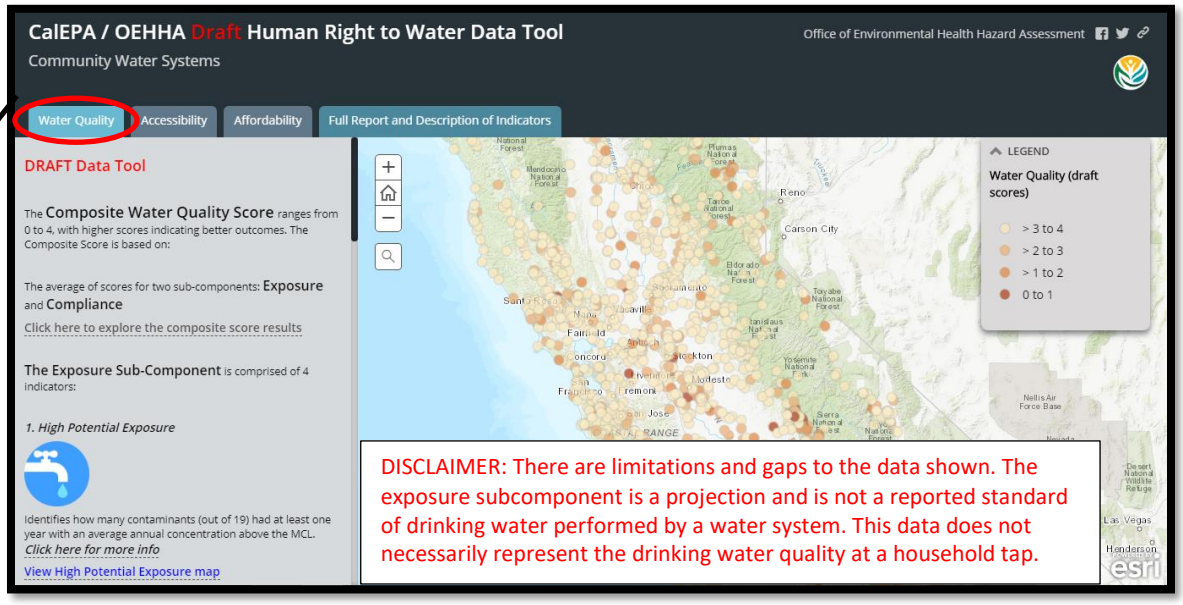
The Draft Report states in footnote 8 that "*most human right to water efforts, such as the United Nations' Joint Monitoring Program, only evaluate water quality in relation to compliance with regulatory standards*" (Page 9). The exposure subcomponent is based on MCL standards, which is duplicative to the non-compliance subcomponent. Further, the exposure subcomponent does not accurately represent water quality contamination at the household tap since water systems do not test water quality standards at individual households, with the exception of the Lead and Copper Rule as noted in the Draft Report in footnote 16 on page 13. Therefore, we strongly recommend this indicator be removed.

b. **If the exposure subcomponent is not removed, at a minimum, the tool should include a disclaimer that the exposure subcomponent does <u>not</u> represent drinking water standards at the tap.**

ACWA and CMUA have concerns with the narrative in the Draft Report regarding where water sampling occurs by water systems. Figure 4 on page 10 shows an example water system, depicting where a water system tests for drinking water violations and where the distribution

system serves water at household taps or faucets. However, public water systems test for drinking water standards within the water system, and not at individual, household taps (with the exception of the Lead and Copper Rule as noted in the Draft Report in footnote 16 on page 13). On page 10 of the Draft Report it states, "*Average water quality calculated in the distribution system (D) is used to represent an estimate of tap water quality at Point E, for which data is not available*." This disclaimer needs to be included on the tool if the exposure subcomponent remains in the tool, so that the public and users understand that water quality data is not collected at the tap and that the data show in this tool is a projected estimate.

Once the water quality component is selected, the disclaimer should pop up at the bottom of the screen



ACWA and CMUA also recommend the graphic on page 10 include a disclaimer or be altered to provide an additional arrow with a treatment plant in between the groundwater well and the home to reflect that some systems that rely on groundwater do treat the groundwater prior to it being delivered to customers.

c. Correct all MCL standard references to be in exceedance of an MCL if in violation, for consistency with state and federal laws.

Based on state and federal drinking water laws, a consistent revision to be made through the Water Quality component is that if referring to an MCL violation the reference must be in exceedance of an MCL. Public water systems must conduct quarterly monitoring samples for most contaminants. Compliance with an MCL is determined by a running annual average, if any one sample would cause the annual average to exceed the MCL, the system is immediately in violation. The Draft Report must use consistent language, such as in exceedance of the MCL, not at the MCL. This should be corrected throughout the document, and in particular on page 13 and 14.

d. The non-compliance subcomponent under Water Quality should include a temporal indicator to measure when violations occurred within the overall timeframe from 2008 to 2016.

The proposed timeframe for analyzing data in the Draft Report is projected from 2008 to 2016. This Draft Tool should include a metric associated with the timing of compliance with drinking water standards and when they are achieved by water systems. We have concerns with the proposed nine-year period, based on the fact that a system may be scored poorly based on a prior violation record that occurred early on within that timeframe but has subsequently treated and resolved the violation. The proposed timeframe would capture such violations as part of the water system record and potentially inaccurately portray a system as non-compliant, even if the issue has been resolved. We do not believe that a water system should still receive a low score due to prior violations being included based on the timeframe for the dataset.

Therefore, ACWA and CMUA recommend a temporal indicator be included identifying if a system has successfully resolved a violation within the timeframe by taking corrective actions. Providing a historical snapshot of violations within a nine-year timeframe is not the same as providing an accurate portrayal of current drinking water violations and could be misleading to the public. It is important that the public who may be viewing this tool have clarity on when a violation occurred, its severity and duration. Without this context, there could be confusion. ACWA and CMUA are available to discuss examples with OEHHA staff of how frequently drinking water testing occurs and what an appropriate timeframe should be, consistent with water system compliance.

IV. Component 2: Water Accessibility

Comment 6: The vulnerability assumptions outlined in the Water Accessibility Component should be re-evaluated to determine whether they are valid and, at a minimum, need to include in the Draft Tool a disclaimer of the limitations of the indicators as presented.

ACWA and CMUA suggest that OEHHA re-evaluate several of the proposed vulnerability assumptions in the Water Accessibility component and verify the proposed indicators with the water community. For example, the physical vulnerability subcomponent outlines several assumption, such as "*A groundwater-dependent system with only one well is more vulnerable to a water outage than a system with dozens of wells…"* and that "…*physical vulnerability may be shaped by how many wells a groundwater-dependent system has, and whether these wells offer an adequate supply of water based on the number of customers served or the storage capacity of the water system*" (Page 44). These assumptions discount the operational intricacies of regional water management between water systems who have partnerships, agreements or interties within a given region throughout the state that allow these systems in a region to be resilient and sustainable. Supply and demand information is documented by water systems in Urban Water Management Plans and drought risk assessment plans, and such data should be analyzed and incorporated into this metric to provide a more robust, contextualized perspective of the accessibility component of a water system.

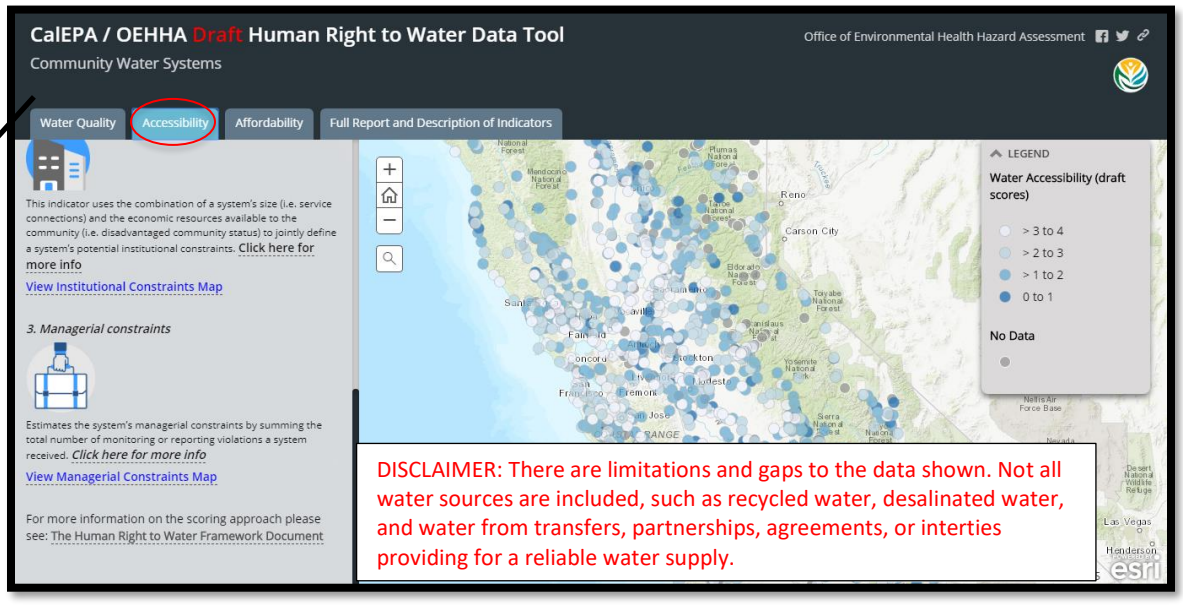
ACWA and CMUA suggest the inclusion of the following to focus on water reliability in the accessibility component:

- The incorporation of the stress test results required by the State Water Board;
- The incorporation of supply and demand data from Urban Water Management Plans;

- The incorporation of data/information related to other water sources outside of surface or groundwater, such as recycled water, desalination, and water transfers between agencies; and
- A process for water systems to correct SDWIS data that may not accurately represent their water system.

It was clarified at the Technical Forum Workshop on October 17, 2019 that the SDWIS data is collected and compiled manually by district engineers into the SDWIS database making it a highly variable process. Given the numerous demands of district engineers, updating system data can vary by region and workload. If the relevant data/information listed above is not included in this component, disclaimer language should be included in the Draft Tool to show the limitation of this information in this component. We are available to discuss examples of what documentation water systems record, regarding water supply and demand related to the accessibility of water.

Once the water accessibility component is selected, the disclaimer should pop up at the bottom of the screen



Additionally, for the accessibility indicator 2 under institutional constraints (page 49) may need some additional ranges. For example, a medium-sized water system serving between 200 and 9,999 service connections that does not serve any disadvantaged communities cannot receive a score higher than a three. This could be resolved by allowing several ranges of service connection for a medium sized system since 200 to 9,999 is a very large range. OEHHA staff should take additional time to further verify the validity of the Water Accessibility Component as a whole with water community input to identify what information is needed when analyzing the physical and institutional vulnerabilities of water systems.

ACWA and CMUA believe that if an agency is part of a mutual aid network such as CalWARN, the California Utilities Emergency Association or has mutual aid agreements with other local utilities, that should be factored into their score.

V. Component 3: Water Affordability

Comment 7: If OEHHA continues with the current Affordability Component, the Draft Tool must have a disclaimer stating that this component currently measures the household's ability to pay, which is part of a larger affordability challenge. This is part of the state's cost-of-living challenges and as such outside the jurisdiction of a water system and is not something that reflects the performance of the water system itself.

The income of a household and the individual household's ability to pay needs to be contextualized as part of a larger statewide affordability challenge. For example, there are other expenses that an individual household may struggle to pay, such as the rising cost of housing or rent, food, clothing, healthcare, phone, and internet services, compared to the cost of their water bill. Further, additional subsidies that a household receives are part of their 'ability to afford' other expenses such as utilities and should be considered a part of the affordability component. These other considerations are not incorporated into the affordability component and are not a part of a water system's authorities or jurisdiction, which is difficult to reflect when scoring is reflective of at the water system scale.

Household ability to pay a water bill should not be used solely for the affordability component. Further indicators need to be developed to measure the financial sustainability of a water system, which would serve as a better assessment of financial capacity and management of a system as indicated in Figure 27 on page 63 of the Draft Report. Household ability to pay is not an equitable measure of affordability, which is why we recommend this component be further developed. For example, if a water system does have an existing, local low-income water rate assistance program to support those households that do not have the ability to pay their water bill, can they receive an additional point to their affordability score? The overall cost of water includes the water utility's finances, operations and capital investments, staffing, water treatment technologies, the types of water supply sources, and ensuring a reliable source of water for emergency circumstances, such as fire flows. There is currently no definition for water affordability and household ability to pay does not provide an accurate reflection of the true, full cost of a utility's water service to its community. We have concerns with the affordability component and the way in measures presented. A clear disclaimer needs to be included in the Draft Tool on this component, stating that additional affordability metrics need to be developed.

Comment 8: We strongly suggest that OEHHA more fully vet the Affordability Component and host a discussion prior to the release of the final tool with the water community and academia who expressed concerns during the public workshops.

Throughout the public comment period at different public workshops, many local water agencies, academia and interest groups expressed concerns related to the Water Affordability Component. The implications of this component are *very* important and require thoughtful input to be considered a groundtruthed measure. Therefore, we suggest an additional stakeholder discussion occur with the water community and academia on how to improve this component.

Comment 9: The inclusion of the proposed county deep poverty indicator is duplicative and should be removed.

As presented in the Draft Tool, the customer's ability to pay for water is relative to living in a specific area or community. As the Draft Report states in a footnote at the bottom of page 64, "*Data limitations make it hard to analyze affordability at the household level*." The deep poverty level indicator as currently proposed in the Water Affordability component is simply the poverty level indicator divided in half. Rather than provide multiple indicators for a similar output, we believe this metric can be removed. The poverty level and median household income levels are different from the threshold identified by statute for the development of a plan for a low-income water rate assistance program, which identifies a statewide affordability program to support low-income households, defined as "*a household with income that is equal to or no greater than 200 percent of the federal poverty guideline level*" (AB 401, Statues of 2015). The State Water Board is currently evaluating whether that threshold make sense. The State Water Board will be providing recommendations to the Legislature, and subsequent legislation is likely to follow. In the draft report on AB 401 Implementation, the State Water Board is seeking feedback if they should change their proposed affordability threshold, where *"…shrinking eligibility to households earning up to 150% of the FPL would reduce program costs, while expanding eligibility to households earning up to 250% of the FPL would raise program costs* [and]…*the Board looks forward to receiving feedback…"* (Page 7). With respect to timing, it is premature to be developing indicators regarding affordability when the state is evaluating how to measure, assess and address affordability, while we await the AB 401 Report. Additionally, the California Public Utilities Commission is also examining this issue in their proceeding assessing affordability across utility services. [1]

Similarly, on page 74, 80, and 83 of the Draft Report, the composite affordability ratio range needs to be reconsidered. It is confusing that there is a 0% affordability ratio as part of the range when there is a cost to treating and conveying water within a system. We would like to discuss the composite affordability ratio range further with OEHHA staff to provide alternative ways to show this metric.

Comment 10: At a minimum, the Draft Tool needs to provide a disclaimer that there are challenges and limitations in the Affordability Component data. Further, additional information should be included under each systems affordability information to contextualize the source and transport cost that is imbedded in the cost of water.

ACWA and CMUA recognize how the Draft Report articulates through a hypothetical system example that strategies to address the affordability challenges "*…should be explored with care*" and that "*a simple decrease in rates could potentially compromise the system's high water quality*" (Page 105). However, this disclaimer is not in the Draft Tool and should be included in the final Tool. The public and tool users need to understand that the cost of water is based on treatment to uphold safe drinking water standards which may vary depending on source quality, contaminants and existing treatment capacity. The cost of treating contaminants should be considered in the tool to properly contextualize inherent costs of providing safe drinking water. Similarly, the cost of water includes a reliable source of water for emergency circumstances, such as the need to have available fire flow. Users also need to understand the cost of a reliable water source include managing, transporting, and maintaining infrastructure to convey and

[1] CPUC R. 18-07-006

make water accessible. The water community can provide additional examples of these complexities on water affordability issues with OEHHA staff.

As an example, the relative cost to transport water across the state to the more southern, densely-populated areas where there is human need is an inherent cost of water. Some agencies may have local water sources which must be pumped from deep aquifers which could also result in high energy costs factored into water rates. The affordability component should include the following data when looking at the affordability information to contextualize the data to more accurately reflect the considerations of a specific water system: the location of the system by county name, the percentage breakdown of the water sources (surface water, groundwater, purchased water, recycled water, desalination, etc.) and potentially the kilowatt per house cost of electricity. This information is available in the State Water Board's Electronic Annual Report that water systems provide the state.

Once the affordability component is selected, the disclaimer should pop up at the bottom of the screen